

**REMARKS**

**I. Status of the Claims**

After entering this amendment, claims 20-26 are pending. Claims 1-19 have been canceled without prejudice to pursue canceled subject matter in a continuing application, and without disclaimer of any subject matter.

New claim 20 recites compounds of formula (III) in which  $X_5$  is  $>C-F$ , support for which can be found, among other places, on pages 3, 4, 16, 17, and 19 of the specification. The proviso of claim 20 finds support in the specification, which affirmatively recites that  $R'_5$  can be fluorine (page 3, paragraph [014], and page 9, paragraph [022]); Hal can be chlorine (page 19, paragraph [051]), and  $R_1$  and  $R'_2$  can be alkyloxy (page 4, paragraph [014]). The law supports such a proviso: "If alternative elements are positively recited in the specification, they may be explicitly excluded in the claims." M.P.E.P. § 2173.05(i) (*citing In re Johnson*, 558 F.2d 1008, 1019, 194 U.S.P.Q. 187, 196 (C.C.P.A. 1977).).

Similarly, new claims 21 and 22 find support, among other places, in the specification on page 19, paragraph [051].

The compound recited in new claim 23 appears in the specification on page 460, in paragraph [03529]. The compound of claim 24 finds support on page 19, paragraph [051], and by analogy, in the compounds named in paragraphs [03521] and [03529] on pages 458 and 460, respectively. The compound recited in claim 25 appears in paragraph [03521] on page 458. Claim 26 finds support, among other places, on page 460, paragraph [03525].


The process of claim 27 finds support in the specification at p. 460-461, paragraphs [03529] to [03538], and by analogy with the methods described generally at p. 35-40, paragraphs [085] to [099]. The process of claim 28 finds support in the specification at p. 460-461, paragraphs [03529] to [03538]. The processes of claims 29 and 30 find support in the methods described generally at p. 35-40, paragraphs [085] to [099], e.g., at paragraphs [088] to [089]; and also by analogy with the methods described in the specification at p. 433-434, paragraphs [03427] to [03430]. The process of claim 31 finds support in the methods described generally at p. 35-40, paragraphs [085] to [099], e.g., at paragraphs [091] to [093]. The process of claim 32 finds support in the specification at p. 458-461, paragraphs [03521] to [03538].

**CONCLUSION**

Please grant any extensions of time required to enter this Amendment, and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

By:   
Carlos M. Tellez  
Reg. No. 48,638

Dated: June 27, 2003

FINNEGAN  
HENDERSON  
FARABOW  
GARRETT &  
DUNNER LLP

1300 I Street, NW  
Washington, DC 20005  
202.408.4000  
Fax 202.408.4400  
www.finnegan.com